

**Mitchellace, Inc. and Chicago & Central States  
Joint Board, Amalgamated Clothing & Textile  
Workers Union, AFL-CIO-CLC, Petitioner.**  
Case 9-RC-16259

July 27, 1994

**DECISION AND CERTIFICATION OF  
REPRESENTATIVE**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND COHEN

The National Labor Relations Board, by a three-member panel, has considered determinative challenges and objections to an election held September 23, 1993, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Decision and Direction of Election. The revised tally of ballots shows 111 for the Petitioner, and 100 against, with 11 remaining determinative challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs and has decided to adopt the hearing officer's findings<sup>1</sup> and recommendations with respect to the Employer objections,<sup>2</sup> but with respect to the challenged ballots, we find, contrary to the hearing officer's recommendation, that the Petitioner's challenges to the ballots of Holly Boggs and Stacey Clark should be sustained.<sup>3</sup>

The facts are not in dispute. Boggs and Clark are data entry clerks responsible for entering production data into computers. Operators and floor leaders fill out production data sheets at the end of their shift which are then taken by the floor leaders or supervisors and put into mailboxes situated outside the data entry clerks' offices. The data entry clerks generate production reports which are used to track productivity by showing operator and machine output. The reports are posted in the production area and are distributed to supervisors, floor leaders, and the plant manager via their mailboxes. Production is then compared with pre-

set "production norms" to determine operator and machine productivity.

Both Boggs and Clark work in the front office area where the office clerical, supervisory, and management offices are located. They have work-related contact with plant employees only when they have questions about the production data which cannot be answered on the phone and occasionally when a floor leader drops off the production reports. Clark testified that she would speak to the floor leaders approximately once a day but that she only entered the production area about twice a month. Boggs testified that she entered the production area approximately once a week and spent 50 percent of her time on data entry. In addition, Boggs also prints shipping labels for large orders which the Employer produces for other companies and testified that production supervisors would bring those labeling orders to her office.

Boggs also prepares data on production savings and conducts observational monitoring of operator and machine productivity. The results are then used to set "production norms" by which individual output and efficiency are measured. During the summer, in response to a company request, both Boggs and Clark, like other clerical employees, worked in the production area for short periods because of temporarily increased production requirements.

Boggs and Clark are both supervised and evaluated by office manager, Myria Denniston, who also supervises five other admitted office clericals. Office clericals' performance evaluations are reviewed by the Employer's chief operating officer, Steve Keating, to whom Denniston reports. Both Boggs and Clark are identified on their annual performance evaluations as working in the office department and are paid on the office pay scale. In contrast, employees Judy Smith and Barbara Joseph, who are also data entry clerks and admitted plant clericals, work in the production area, are part of a separate production supervisory hierarchy which ultimately reports to the plant manager, and are paid on the plant employee pay scale.

Boggs and Clark participate in functions which are for office personnel only, such as the office Christmas party, and Boggs testified that she attended office employee birthday parties. In addition, Boggs has participated on two occasions as a judge in the Employer's "Good Housekeeping Program" in which office employees review the production departments for cleanliness and award an extra hour of pay to the production employees in the winning department.

Given these facts, we find, contrary to the hearing officer, that Boggs and Clark are office clericals.

The Board has long held that the distinction between office and plant clericals is rooted in community of interest concepts. *Minneapolis-Moline Co.*, 85 NLRB 597, 598 (1949). Clericals whose principal functions

<sup>1</sup> The Petitioner and the Employer have excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

<sup>2</sup> We recognize that the instant case arises in the Sixth Circuit, which modified the Board's *Midland National Life Insurance Co.*, 263 NLRB 127 (1982), standard in *Van Dorn Plastic Machinery Co. v. NLRB*, 736 F.2d 343 (6th Cir. 1984), cert. denied 469 U.S. 1208 (1985). We adhere to the *Midland* standard. However, even applying the *Van Dorn* standard to the facts of this case, we find that the two flyers distributed by the Union did not contain such pervasive misrepresentations or artful deceptions as to affect employee free choice in the election.

<sup>3</sup> In the absence of exceptions, we adopt pro forma the hearing officer's recommendations that the challenges to the ballots of Robert Allen, Sam Ratliff, Jill Burton, Barbara Bratt, Ina Barton, and Linda McCoy be overruled.

and duties relate to the general office operations and are performed within the office itself are office clericals who do not have a close community of interest with a production unit. This is true even if those clericals spend as much as 25 percent of their time in the production area and have daily contact with production personnel. *Container Research Corp.*, 188 NLRB 586, 587 (1971).

Under the facts of this case, we find Boggs and Clark do not share a community of interest with the production employees. They are separately located in the office area, are separately supervised, and have limited work-related contact with the production employees. They attend office functions, are excluded from participation in plant employee incentive programs, and are characterized by the Employer as office employees on their annual evaluations. In these circumstances, we find that they are office clericals and therefore are excluded from the unit. See *Cook Composites & Polymers Co.*, 313 NLRB 1105 (1994); *Virginia Mfg. Co.*, 311 NLRB 992 (1993); *Jakel Motors*, 288 NLRB 730, 742 (1988), *enfd.* 875 F.2d 644 (7th Cir. 1989).

In addition, Boggs also conducted observations of machine and operator efficiency which were subsequently used to set “production norms,” which were in turn used to evaluate employee output, and on occasion production employees would come and discuss

problems they had in meeting the norms with Denniston and ask that the norms be reevaluated. As the Board has noted, this monitoring function may lead unit employees to consider Boggs to be more aligned with management’s interest than with theirs. *Virginia Mfg. Co.*, *supra*.

For these reasons we shall sustain the challenge to the ballots of Boggs and Clark. The remaining challenged ballots are no longer determinative,<sup>4</sup> and we accordingly find that a certification of representative should be issued.

#### CERTIFICATION OF REPRESENTATIVE

It is certified that a majority of the valid ballots have been cast for Chicago & Central States Joint Board, Amalgamated Clothing & Textile Workers Union, AFL–CIO–CLC and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All production and maintenance employees, including receiving, shipping and print shop employees, employed by Mitchellace, Inc. at its Portsmouth, Ohio facility, excluding all office clerical employees and all professional employees, guards, and supervisors as defined in the Act.

---

<sup>4</sup> We therefore find it unnecessary to pass on the remaining challenged ballots.